UNITED STATES DEPARTMENT OF ENERGY

Interstate Electric Transmission System;	}	
Electric Reliability Issues;	}	65 Fed. Reg. 69753
Notice of Inquiry	}	

Transmitted by e-mail to policy.energy@hq.doe.gov re. Electric Reliability Comments

ELECTRIC RELIABILITY COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

The National Rural Electric Cooperative Association (NRECA) is a not-for-profit national service organization. It represents 930 rural electric systems (RECs) providing central station electric service to more than 34 million consumers in 46 states. Of these rural systems, 60 are generation and transmission cooperatives, which are owned by and serve approximately 695 of 870 distribution cooperatives.

RECs are not-for-profit cooperatively run organizations dedicated to bringing reliable, affordable electric energy to their members. They are owned and governed by their member-consumers. Kilowatt-hour sales by RECs amount to 9% of total electricity sales in the United States, approximately 45% of the electricity sold by cooperatives is purchased from others.

NRECA appreciates the opportunity to comment on the Department of Energy's (DOE) Notice of Inquiry on electric reliability. Access to affordable and reliable electric power is critical to NRECA's members, to their consumer-owners, and to the communities in which they operate.

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DISCUSSION

1. ***Is the existing arrangement of voluntary compliance with industry reliability rules sufficient to ensure reliability of the bulk power transmission system? If not, why not, and has reliability been jeopardized by violations of the existing bulk power reliability standards?***

No. The industry's voluntary reliability regime may have sufficed in a pre-open access world, but the passage of the Energy Policy Act of 1992 and the Federal Energy Regulatory Commission's ("FERC") issuance of Order Nos. 888 and 889 have changed the reliability landscape substantially and irrevocably. Many new entities are using regional transmission systems, and the prior tradition of cooperation among system operators has encountered some serious problems as markets become more competitive.

In a recent press release, NERC announced that the overall results of its Year 2000 Compliance Program show that the Regional Reliability Councils and their members are about 90% compliant. While we, like Michehl R. Gent, President of NERC, are pleased to see this degree of compliance," we agree with Mr. Gent that “for the sake of reliability, we need to be 100% compliant.”

While violations of the existing bulk power reliability standards have not yet led to interruptions in service, they have put significant stress on the bulk power system. It is important for the industry to act to preserve reliability now, before violations of reliability standards have the opportunity to disrupt the system.

For that reason, NRECA supports the North American Electric Reliability Council’s legislative proposal to create the North American Electric Reliability Organization as a single national self-regulating reliability organization with the authority to set mandatory reliability standards applicable to all users of the bulk transmission system. That proposal is the best means to ensure continued reliability of the interstate transmission grid in a competitive environment.

If, however, Congress is unable to enact NERC’s reliability legislation, that is not sufficient justification for FERC to act precipitously. NERC should be able to accomplish most of the goals of its legislative proposal through a contract- or agreement-based program in which the Regional Reliability Councils and their members will jointly agree in advance that specified sanctions may be imposed by the Regional Council for violations of certain identified standards. The Western Systems Coordinating Council has already adopted and obtained FERC approval for a similar program.

NERC is working to develop an organized plan that NERC is calling "Plan B" for the transition from NERC to a contract-based NAERO. The public is commenting now on preliminary recommendations developed by four NERC committees working on individual pieces of the plan.

NRECA continues to support reliability legislation. Should legislation not prove practical, NRECA believes that Plan B is the best alternative. Certainly, Plan B is more promising than the regulatory process on which the NOI is premised. Plan B can probably be implemented more quickly, especially where international cooperation is required, than a regulatory approach, with less litigation and more industry support.

2. What can FERC do under existing authorities to address reliability concerns?

FERC's role in reliability matters under existing authority is narrow.[1] Any authority FERC has over reliability derives entirely from FERC's jurisdiction over rates, terms, and conditions of wholesale electric sales in interstate commerce and interstate electric transmission. Thus, as FERC recently explained:

> While the Commission does not have direct responsibility over reliability matters, its consistent policy has been to assure that the exercise of its ratemaking and other jurisdictional responsibilities supports and facilitates the continued high degree of reliability that has existed in the U.S.

Notice of Interim Procedures to Support Industry Reliability Efforts and Request for Comments, 91 FERC ¶ 61,189 (May 17, 2000) (Notice).

FERC can also exercise jurisdiction over reliability to the extent that a reliability rule or agreement adopted by a jurisdictional entity "affects not only reliability but also

matters subject to our jurisdiction under the FPA (such as a transmission line loading relief rule that affects the curtailment provisions of the New York ISO tariff)." New York State Reliability Council, 90 FERC ¶ 61,313 (March 29, 2000). To determine whether an agreement on reliability or other issues is subject to its jurisdiction, FERC applies a "rule of reason" analysis. Western Systems Coordinating Council (WSCC), 87 FERC ¶ 61,060 (April 14, 1999). FERC analyzes whether the agreement "affects or pertains to" rates and charges subject to FERC's jurisdiction. Id.

Even where it has indirect authority over reliability matters, FERC has consistently decided as a matter of policy to defer to industry-driven reliability efforts. For example, FERC recently explained that it has been careful "not to become involved in the day-to-day operation of the electric grid or to duplicate or supplant the efforts of others in the industry." Notice. We agree with Commissioner Herbert's observation in the Notice that, "the Commission historically has left matters of reliability to the true experts in the field – the North American Electric Reliability Council, the various regional reliability councils around the country, and all affected industry participants."

As FERC found in a recent order accepting limited jurisdiction over the Western Systems Coordinating Council's (WSCC) Reliability Management System (RMS). WSCC, 87 FERC ¶ 61,060 (April 14, 1999), FERC can best serve as a back-stop to industry-driven reliability efforts. In that case, the WSCC proposed to create a program very similar to that envisioned in NERC's reliability legislation. Pursuant to a contract with each of the users of the bulk power system in the western interconnect, WSCC would have the authority to establish and enforce mandatory reliability standards. WSCC

[1] See, e.g., 19 Energy Law Journal 1, 11 (1998) ("As Deputy Secretary of Energy Moler testified, the legal authority of the FERC in the area [reliability] remains 'unclear' at best.").

asked FERC to take jurisdiction over the RMS, find that the RMS is just and reasonable, and serve an appellate role for those dissatisfied with the results of the RMS' alternative dispute resolution procedures (ADR).

Applying the "rule of reason" analysis, FERC accepted jurisdiction over the RMS because it "significantly 'affects or pertains to' rates and charges by public utilities subject to" FERC's jurisdiction. FERC agreed, however, to take only a very limited role. It stated that its "historical position has been that the responsibility for establishing mutually acceptable operating practices falls, in the first instance, on the owners and operators of interconnected systems, " and that it would, accordingly, "give substantial deference to WSCC in the development of reliability standards."

FERC also chose to "take a limited role in resolving disputes about failures to adhere to the WSCC reliability criteria," and rejected WSCC's proposal that some parties be permitted to appeal directly to FERC without using the RMS's ADR procedures. FERC explained, "[g]iven the Commission's limited experience on the issues addressed by the RMS, we believe that a more appropriate procedure would be for parties to exhaust all of the proposed ADR procedures before seeking a Commission ruling. This requirement will ensure greater reliance on the expertise of local industry participants."

3. If FERC has the authority to establish and enforce reliability standards, may FERC delegate such authority to a self regulating reliability organization? Should it do so?

As discussed under question 2, nothing in the Federal Power Act or FERC's prior orders suggest that FERC has the authority to establish and enforce reliability standards sua sponte. At most, FERC has the authority to review reliability standards developed by

the industry and individual regulated entities to the extent those standards significantly "affect or pertain to" jurisdictional rates and tariffs. WSCC.

Should the Department of Energy or FERC conclude that FERC has such authority, NRECA strongly supports delegation of that authority to a self-regulating reliability organization. As discussed above, FERC has correctly concluded that the industry has far greater expertise in the operation of the system than FERC itself.

Operation of transmission systems is a highly interdependent and complex engineering enterprise, requiring cooperation by all entities using the grid. It therefore makes sense to mandate a reliability structure that requires transmission providers, users, and other interested parties to collaborate in developing the national and regional rules and standards needed to maintain the reliability of the system upon which they all depend. This process is difficult, but is preferable because those who must live by and with the rules should make them.

4. ***Are there elements in CECA, or other electric reliability legislative language, which can, with or without modification, be used in a rulemaking?***
5. ***What should the relationship be between Regional Transmission Organizations, as advanced in FERC Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (2000), and an Electric Reliability Organization as proposed in CECA.***
6. ***How should the responsibilities and roles of FERC and the States be addressed in a rulemaking?***

Because NRECA does not believe that a rulemaking is necessary or appropriate at this time, it believes that it is premature for DOE or FERC to consider these issues.

7. Recognizing the international nature of the interconnected transmission grid, how could implementation of mandatory reliability standards be coordinated with Canada and Mexico?

The physical interconnection between the United States', Canada's and Mexico's electric power grids is one of the best reasons to prefer a voluntary, industry-driven approach to reliability over a regulatory approach. FERC does not, and would not under new legislation, have jurisdiction over Canadian or Mexican utilities or utility facilities. It cannot impose a regulatory structure on foreign utilities and facilities without the consent of those entities and their respective governments.. Negotiating multinational agreements through the U. S. Department of State would be a challenging process.

A voluntary industry-driven approach, however, by necessity brings foreign and domestic users of the bulk power system together in a consensus building process. That process has allowed NERC to obtain voluntary compliance with reliability rules from foreign utilities for decades. Now, the WSCC's contract-based process has brought foreign utilities in two Canadian provinces and part of one Mexican state voluntarily into a regime with mandatory, enforceable reliability standards. As we move forward, we should continue to put faith in that process to work as we expand the WSCC model into the other North American electrical systems.

Respectfully submitted,

/s/
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